the date the applicants' solicitors released the cheque to Messrs. Khong & Son the solicitors for the Malaya Borneo Building Society Ltd. This fact was clearly stated by PW1 the managing director of the applicant company in cross-examination. Even though the memorandum of agreement of repayment was executed on 2nd October, 1967, the money was however only released by Messrs. Khong & Son on 11th October, 1967, which date I assume to be the true date when the money was lent to the respondent. That being so, the applicant company would appear to be claiming interest from a date even before the money was lent and this is highly irregular and this defect cannot be waived.

It is now apparent that the applicants have failed to comply with several provisions of the Moneylenders Ordinance, 1951, and their failure to do so would render the contract unenforceable. The application is therefore dismissed with costs.

Application dismissed.

Solicitors: *Lewis & Co.; J. R. Devadas.*

YEE YA MANG v. PUBLIC PROSECUTOR

[A. Cr. J. (Sharma J.) November 25, 1971]

[Muar — Criminal Appeal No. 47 of 1970]

Arms and Explosives — Charge — Possession of arms and ammunition — Meaning of "possession" — Arms Act, 1960, s. 9(a).

Evidence — Confession made by appellant in the course of police investigation — Whether admissible — Evidence Ordinance, 1950, ss. 25 and 27.

The appellant was charged under section 9(a) of the Arms Act, 1960 for having in his possession a pistol and three rounds of ammunition, without an arms licence or an arms permit. The pistol and the three rounds of ammunition were not found in the house occupied by the appellant but at a spot in a rubber estate pointed out by the appellant. In the course of police investigation the appellant said that he had a revolver. Subsequently he took the police officer to the spot where the revolver was found. The spot pointed out by the appellant was a pit, covered by pieces of wood, underneath which was found a plastic bag. Inside this plastic bag was a stocking containing the subject matter of the charge. About an hour earlier the appellant had taken the police to a different spot in another rubber estate from where a toy pistol was recovered.

Held: (1) the confession made by the appellant was inadmissible under section 25 of the Evidence Ordinance as there was no evidence to show that the police officer to whom it was made was not below the rank of inspector, and it was not admissible under section 27 of the Evidence Ordinance as the possession of the revolver was not discovered in consequence of the information given by the appellant and further did not distinctly relate to the facts discovered in consequence of such information;

(2) the appellant gave an explanation as to how he came to know where the revolver was lying hidden. The knowledge of the place where the revolver was lying hidden did not necessarily constitute possession by the appellant unless there was further evidence produced by the prosecution that it was the appellant who had hidden it there. In the circumstances, the appeal must be allowed and the conviction quashed.

Per Sharma J.: "The word 'possession' implies a physical capacity to deal with the thing as one likes to the exclusion of everyone and a determination to exercise that physical power on one's own behalf. It implies dominion and consciousness in the mind of the person having 'possession', that he not only has such dominion, but also that he can exercise it. In the present case, if, for example, the accused had gone alone to the spot in question and took out the loaded pistol from the place of concealment, the loaded pistol could be said to be in the possession of the appellant as it lends support to the conclusion that it was within his exclusive knowledge as to where this pistol was kept concealed in the rubber estate... In the absence of any incriminating statement made by the accused leading to the discovery of the articles, their production alone from another man's land cannot be sufficient to establish the accused's possession. It may at the most show his knowledge that the articles were concealed there. It is the prosecution that has to establish accused's possession apart from his knowledge."

Observations on the provisions of section 27 of the Evidence Ordinance 1950 as regards how much information received from the accused may be proved.

Cases referred to:-

(1) *Emperor* v. *Chokhey* A.I.R. 1937 All. 497.

(2) *Trimbak* v. *State of Madhya Pradesh* A.I.R. 1954 S.C. 39.

(3) *Naurang Singh* v. *Emperor* A.I.R. 1927 Lah. 900.

(4) *Khuda Baksh* v. *King Emperor* A.I.R. 1923 Lah. 238.

(5) *Pulukuri Kottaya & Ors.* v. *Emperor* A.I.R. 1947 P.C. 62.

(6) *Ramkishan Mithanlal Sharma & Ors.* v. *State of Bombay* A.I.R. 1955 S.C. 104.

(7) *Karam Din* v. *Emperor* A.I.R. 1929 Lah. 338.

MAGISTRATE'S CRIMINAL APPEAL.

Elyas Majeed for the appellant.

Ahmad bin Haji Abdul (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Sharma J.: The appellant was charged under section 9(a) of the Arms Act 1960 for having in his possession a pistol and three rounds of ammunition without an arms licence or an arms permit. The pistol and the three rounds of ammunition were not found in the house occupied by the accused but at a spot in a rubber estate pointed out by the accused. The spot pointed out by the accused was a pit 4 feet long, 3 feet wide and 2½ feet deep. This pit was covered by two or three pieces of wood which were removed by the police and in the pit underneath those pieces of wood was found a plastic bag. Inside this plastic bag was a stocking containing the revolver loaded with the three rounds of ammunition, the subject matter of the charge. A piece of cloth had been wrapped round that revolver. About an hour earlier the accused had taken the police to a different spot in another rubber estate from where a toy pistol was recovered.

The word "possession" implies a physical capacity to deal with the thing as one likes to the exclusion of everyone and a determination to exercise that physical power on one's own behalf. It implies dominion and consciousness in the mind of the person having "possession" that he not only has such dominion but also that he can exercise it. In the present case if, for example, the accused had gone *alone* to the spot in

question and took out the loaded pistol from the place of concealment, the loaded pistol could be said to be in the possession of the accused as it lends support to the conclusion that it was within his exclusive knowledge as to where this pistol was kept concealed in the rubber estate. There may, however, be cases where a court is not justified in presuming possession of the person who had mere knowledge of the articles concealed. A good deal depends upon whether the production was accompanied by information given by the accused in custody as would be admissible under section 27 of the Evidence Ordinance. Such information can be relied on by the prosecution as incriminating evidence against the accused along with the production or discovery of the articles in question but the mere production of such articles by itself would not necessarily prove his possession. It would at the most show that he had knowledge where the articles were kept or concealed. Thus, when it is proved that the accused made a statement to the effect "I have concealed the articles at a particular place and I will produce them" and if those articles are discovered in consequence of that statement, that would be evidence of his possession even though those articles were kept or concealed in another man's property, because unless he had possession he would not have kept them at that place. When, however, the accused without stating that he had concealed those articles merely produces them from a place to which other people could have access, it would not be sufficient to establish his possession even though the articles may be found carefully concealed and hidden because that is quite consistent with any other person having done so and the accused might merely have knowledge of it. In the absence of any incriminating statement made by the accused leading to the discovery of the articles, their production alone from another man's land cannot be sufficient to establish the accused's possession. It may at the most show his knowledge that the articles were concealed there. See *Emperor* v. *Chokhey*,[1] *Trimbak* v. *State of Madhya Pradesh*,[2] *Naurang Singh* v. *Emperor*[3] and *Khuda Baksh* v. *King Emperor*.[4] It is the prosecution that has to establish accused's possession apart from his knowledge. P.W.1 while giving evidence in examination in chief stated "During interrogation accused told me he had a revolver." In cross-examination PW1 said, "In the course of interrogation the accused told me that he would take me to the place of the revolver." The accused subsequently did take PW1 to the "pit" where the revolver was kept and hidden. The fact that the accused admitted having a revolver meant and could only mean that he had possession of the same. This is the very charge the accused was asked to answer. The statement alleged to have been made by the accused was thus a confession to PW1. I have no evidence before me to show that PW1 was an officer not below the rank of an inspector. Section 25 of the Evidence Ordinance is consequently a bar to the admission of that confessionary statement. Section 25 of the Evidence Ordinance is again subject to the "express provision contained in" section 113 of the Criminal Procedure Code. As far as section 27 of the Evidence Ordinance is concerned it should be observed that the opening words "Provided that" appearing in section 27 of the Indian Evidence Act do not find a place and seem to have been deliberately left out in section 27 of our Ordinance.

In *Pulukuri Kottaya & Others* v. *Emperor*[5] Sir John Beaumont said at page 70:

"Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that discovery of a fact in consequence of information received from a person accused of any offence in the custody of a police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused.... In their Lordship's view it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

In *Ramkishan Mithanlal Sharma & Others* v. *State of Bombay*[6] Bhagwati J. said at page 115:

"Section 27 is an exception to the rule enacted in sections 25 and 26 of the Act which provide that no confession made to a police officer shall be proved as against a person accused of an offence and that no confession made by any person whilst he is in the custody of a police officer unless it be made in the immediate presence of a magistrate, shall be proved as against such person. Where however any fact is discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, that part of the information as relates distinctly to the fact thereby discovered can be proved whether it amounts to a confession or not."

His Lordship then went on to cite from the judgment in *Pulukuri Kottaya* v. *Emperor* and added: —

"On a bare reading of the terms of the section it appears that what is allowed to be proved is the information or such part thereof as relates distinctly to the fact thereby discovered. The information would consist of a statement made by the accused to the police officer and the police officer is obviously precluded from proving the information or part thereof unless it comes within the four corners of the section. If the police officer wants to prove the information or a part thereof, the court would have to consider whether it relates distinctly to the fact thereby discovered and allow the proof thereof only if that condition was satisfied. If however the police officer does not want to prove the information or any part thereof, section 27 does not come into operation at all."

"What was stated by the investigating officer, Hujur Ahmad Khan in the present case was that certain information was supplied to him by the accused 1 in consequence of which he took certain steps. He did not seek to prove that information or any part thereof in the evidence which he gave before the court. Even when he said that Baliram dug out the tin box from the mud floor of a house at the instance of the accused 1, he did not seek to prove what that information was. The operation of section 27 was therefore not attracted and *'prima facie'* there was nothing to prevent that evidence being admitted against the accused 1."

Again in *Karam Din* v. *Emperor*[7] Dalip Singh J. said at page 340:

"In connection with this it is necessary to bear in mind that the word 'information' cannot be used as synonymous with the word 'statement'. There is no reason why the word 'information' should have been used instead of the word 'statement' in the section if by, 'information' statement alone was intended. The word 'information' as distinct from the word 'statement' connotes two things, namely a statement or other means employed for imparting knowledge possessed by one person to another, and the knowledge so derived by the other person."

The word "distinctly" in section 27 of the Evidence Ordinance is important. It means that only that part of the statement which leads directly to the recovery is admissible.

It is not necessary to go into the various authorities but a study of them does show that that part of the statement sought to be put in evidence under section 27 of the Evidence Ordinance which is the very admission of the commission of the crime has been held inadmissible. In the statement made by the accused to PW1 that he (the accused) had or possessed a revolver it cannot be said that "possession" of the revolver by the accused was "discovered in consequence of" the information given by the accused while in the custody of PW1. It further does not "distinctly" relate to the fact discovered in consequence of the information imparted by the accused. What can be said to be discovered is the fact that a revolver with three rounds of ammunition was lying hidden in the rubber estate and that the accused had knowledge of it. In the circumstances, apart from the very serious prejudicial effect the statement was likely to have against the accused, I am of the opinion that the learned president was wrong in admitting that confessionary statement.

The accused gave an explanation as to how he came to know where the revolver was lying hidden. The knowledge of the place where the revolver was lying hidden did not necessarily constitute possession by the accused unless there was further evidence produced by the prosecution that it was the accused who had hidden it there. In the circumstances the appeal is allowed and the conviction is quashed and the order of the learned president set aside.

Appeal allowed; Conviction quashed.

Solicitors: *Elyas Majeed & Co.*

MOHAMED MOKHTAR v. PUBLIC PROSECUTOR

[A. Cr. J. (Sharma J.) December 16, 1971.]

[Ipoh — Criminal Appeal No. 72 of 1971.]

Bribery and Corruption — Accomplice — Whether trap witness is one — Need for corroboration — When dispensed with — Prevention of Corruption Act, 1961, s. 4(a).

This was an appeal against conviction and sentence on a charge under section 4(a) of the Prevention of Corruption Act, 1961.

One of the grounds of appeal was that the complainant was an accomplice and that even if he was not, he at any rate was a participant in the crime and therefore there should be sufficient corroboration of his evidence.

Held, dismissing the appeal: the complainant was a trap witness at the most. Corroboration of the testimony of a trap witness is no doubt desirable and it is not safe to convict the accused in the absence of that corroboration. However, in the present case, the evidence was so clearly against the accused that no court using the standards of any reasonable man could possibly have come to any other inference except the clear guilt of the accused.

Per Sharma J.: "... when the appellate court is convinced, as I am in this case, that the conviction of the appellant was good and there is nothing to cast any shadow of doubt in the finding of guilt arrived at by the learned magistrate or the president, the court itself can deal with the matter as fully and as effectively even though the grounds of decision as appearing in the appeal record are found lacking in specific findings and the reasons for those findings..."

Observations on desirability of grounds of decision being comprehensive.

MAGISTRATE'S CRIMINAL APPEAL.

Edgar Joseph Jr. (*Kam Woon Wah* with him) for the appellant.

Haidar bin Mohd. Noor (Deputy Public Prosecutor) for the respondent.

Sharma J. (delivering oral judgment): This is an appeal against the conviction and sentence of the appellant on a charge under section 4(a) of the Prevention of Corruption Act 1961. The learned president found the appellant guilty of the charge, convicted him and sentenced him to one year's imprisonment. A number of grounds of appeal have been put forward, the most important of them being that the complainant P.W.12 was an accomplice and that even if he was not an accomplice he at any rate was a participant in the crime and therefore there should be sufficient corroboration of his evidence. I am unable to say how P.W.12 can, by any stretch of imagination, be called an accomplice. At the most he may be called a trap witness. The whole object of the Prevention of Corruption Act would be nullified if any public-spirited person decided to go to the Anti-Corruption Agency to tell them that a public officer had demanded a bribe from him and if as a result of his information to the Anti-Corruption Agency a trap was set against the officer in question by asking the member of the public to go and pay the bribe demanded to the said officer. Corroboration of the testimony of a trap witness is no doubt desirable and it is not safe to convict the accused in the absence of that corroboration. I entirely accept that proposition. In this case, however, the evidence was so clearly against the accused that no court using the stan-